ARBITRATION OF INDUSTRIAL DISPUTES

The idea of arbitration contemplates that parties who are unable to agree upon any point or points at issue between them shall submit the disputed point or points to the decision of a person or a tribunal mutually agreed upon. Conferences and negotiations between employers and employees, or intervention in the form of conciliation or mediation, are sometimes erroneously spoken of as arbitration. At times, some one person, in whom both have confidence, is selected as sole arbitrator, but the custom usually adopted in industrial circles is for each of the contestants to name one or more and if an umpire's services are necessary, or stipulated, have the ones thus chosen select such umpire.

It is believed by some who have given the subject much thought that unless an acceptable adjustment can be reached by a board consisting of an equal number of representatives from each side, and without an umpire, the conference had better fail. The disposition to charge disloyalty, or worse, to the representative who agrees with the other side, and the improbability of one who would do so being named by either side as a direct representative of its interests and contentions, would probably, in most cases, prevent arbitration, or at least render any definite adjustment through it impossible. If the idea that it is better to have a board equally chosen and no umpire is to be accepted, it clearly follows that both sides must select representatives or arbitrators who are entirely outside the sphere of influence of either of the contestants; men of undoubted judicial temperament and natures. The great difficulty which would then present itself would be the lack of practical or technical knowledge of the subjects in hand on part of the arbitrators. It seems, therefore, that the plan of trying to agree without an umpire and of choosing an umpire if such an agreement cannot be reached promises the best results. The decision of the arbitrators is accepted in advance as final and binding. It necessarily follows that, in order for arbitration to be effective, the parties in controversy who so submit their differences shall

act in perfect good faith, both in presentation of their claims and in acceptance of the award.

In order that arbitrators may know exactly the points upon which they are to find an award, and that the disappointed party may have no opportunity to contend that there was lack of understanding, or, that if understandings had been different the award would have been in his favor instead of against him, it is desirable and proper that the submission shall stipulate clearly the point or points to be decided.

A tendency on both sides to permit sentiment to outweigh cold common sense has often blocked the way to satisfactory settlements. Insistence by the workers on some point of imaginary importance and unwillingness on the part of the employer to recognize the workers in their collective capacity have brought on serious conflicts in many cases which otherwise might easily have been settled by arbitration.

Some employers have seemingly undertaken to put their employees in a wrong light by insisting that their endorsement of the principle of arbitration committed them to the acceptance of a proposition to arbitrate "any points that may arise." Humanity possesses certain rights which have been emphatically declared to be inalienable and so, both employers and laborers and labor unions have principles which are not arbitrable. An employer would not arbitrate his right to manage his business and a labor union would not arbitrate the question of the right of its members to belong to the union or of the union to assist and represent its members.

Doubtless, in many cases, employers have refused arbitration because of their utter unwillingness to disclose facts with regard to their business which the arbitration would be likely to bring out and probably, in other instances, because they preferred that concessions should be granted through decision of arbitrators rather than by their voluntary act, have carried points to arbitration upon which they felt satisfied the decision would be against them.

Necessarily, the questions affecting only the employment of the individual or a group of individuals in a certain industry are simple as compared with the complex questions involved in the

conduct of the business of a large industry in a competitive field, and it is not improbable that these differences account in some measure for the fact that the workers are so much more ready to submit to arbitration than are the employers. The problem of equitable wages and working conditions cannot be settled on the one basis of supply and demand as can the sale and purchase of produce or manufactures. The wage question involves a human equation which must not be ignored by those who would fairly and justly decide it.

The benefits of arbitration to organized labor have been many and great. It would be impossible to undertake here a recital of the instances in which controversies between employers and employees have been submitted to arbitration and in which the contention of the employees has been upheld in whole or in a major part.[1] Such instances are innumerable and it may safely be said that in practically every instance where disputes over wages or hours or conditions of labor have been submitted to arbitration, the award has been, in its greater part at least, favorable to the employees.

These benefits come, in fact, to organized labor because where there are no labor organizations there is no arbitration of such disputes. The whole history of organization in the ranks of labor shows that practically every labor organization that has ever existed has, at some time in its history, and usually in its younger days, been bitterly opposed by the employers of those who form the union. It does not seem that it should be so but it is a fact that every one of the strongest and most influential of the labor unions of this day, including those that are pointed at now most frequently and with most pride as conservative and businesslike institutions, have, in their day and turn, been obliged to fight for recognition and the right to an unmolested existence.

Recognition of the union does not necessarily mean acceptance of the closed shop principle or any other principle as far reaching or similar in its effect. Recognition as here spoken of means recognition of the right of a union to negotiate through its chosen representatives with employers of its members regarding terms

[1]Much detailed information as to arbitration in this and other countries is given in Vol. XVII of the report of the Industrial Commission of 1900. Some thirty different trades in America are reported on.

and conditions of employment for its members when it actually and fairly represents a clear majority of those for whom it seeks to legislate.

This principle has been recognized by the United States Congress in "An Act Concerning Carriers Engaged in Interstate Commerce and their Employees," approved June 1, 1898, which provides for arbitration between the organization or organizations representing the affected employees and the employing company and stipulates that the commissioner, whose duty it is to undertake to secure arbitration when conciliation and mediation have failed, shall decline to call a meeting of arbitrators under an agreement between the employing company and its employees individually instead of as represented by a labor organization "unless it be shown to his satisfaction that the employees signing the submission represent or include a majority of all employees in the service of the same employer and of the same grade and class and that an award pursuant to said submission can justly be regarded as binding upon all such employees."

The theory or principle of arbitration had its origin in a desire to find a more rational and civilized method of adjusting differences than by the exercise of physical strength in a strike or lockout, and it is a significant fact that the principle has had much more support and encouragement from working people than from employers. Thinking men in labor circles realize that labor unions have made many mistakes and are at all times liable to make mistakes. Disaster and suffering and loss have come through ill-advised strikes, and, realizing the possibility of error, but still convinced that their contentions are right, laboring men generally are found willing to submit such contentions to arbitration, believing that in so far as they are right they will be sustained, and preferring that if they are, in part or in whole, in error it should be demonstrated in a peaceable way rather than otherwise.

The spread of this sentiment among working people has had a strongly ennobling influence. It teaches more consideration for the rights of others; it inspires an inclination to study more carefully the ethics involved and tends to a more businesslike disposition. This is proven by the fact that the spirit of toleration, consideration and arbitration prevails more generally and in a

greater degree in the older and more experienced labor unions than in the new and inexperienced ones. The principle of arbitration involves elevating sentiments, and when entertained, is calculated to bring out the better elements of human nature. It is the essence of doing unto others that which we would have those others do unto us. It is an unadulterated desire to be, and to do, right and to uphold simple justice.

And so the benefits which arbitration have brought to organized labor have been perhaps as great in moral effect as in material and tangible advantages awarded by arbitrators. Organized labor must succeed; and it must succeed through adopting, following and upholding principles which are morally and economically right and sound. No extremist has ever held for long the confidences of the people generally. Extreme ideas and measures are not lasting either in themselves or in their effect. Extremists are not those who would naturally or probably be selected as arbitrators and hence, the more arbitration is indulged in, the wider will be the spread of the judicial spirit of perfect fairness which appeals to, and is admired by, nearly all mankind.

If arbitration had been subscribed to by the miners and mine owners in the Cripple Creek District in Colorado we would now find there a peaceful and contented community, in which employer and employee were doing well in the pursuit of their business and employment instead of the deplorable condition of anarchy which obtains. Excesses and arbitrary methods on part of one side have been rebelled against by those on the other side and, forgetting that tyranny is tyranny, that wrong is wrong, that defiance of law is defiance of law, that anarchy is anarchy just as much when perpetrated by one as by another, the members of the Citizens' Alliance, assisted by some State officials, have resorted to, and adopted, the same extreme, radical and arbitrary methods which they so strongly condemned in others. The Miners' Union said that none but those bearing the working cards of the union should work in the Portland Mine. The owners of the mine agreed to that plan and all was going smoothly when the Citizens' Alliance, assisted by the military, closed the mine and declared that no man should work therein unless he withdrew from the union and pre-

sented a card from the Citizen's Alliance. It is difficult to discover the difference in principle between the two.

The principle underlying arbitration is one of the great truths which are everlasting and the good influences of which are ever at work in a continually widening circle. The elevating and civilizing impulses which have their origin in the doctrine of arbitration will still continue to bring good to organized labor and to all mankind even if the happy time shall come when there are no disputes to be arbitrated.

A prominent and influential trades union incorporates in all of its working agreements with its employers a provision that any contention which may arise during the life of the agreement, with regard to matters covered by that agreement, shall be referred to a committee upon which the employers and the union have equal representation and which is authorized to make a final award. If the committee is unable to agree by a majority vote, the members of it select a disinterested person as umpire and the award is final and binding. The agreement also stipulates that pending such arbitration of differences there shall be no strike or lockout or suspension of work. The national secretary of that union, writing on this subject, says:

"Experience has taught us that the method of adjustment of disputes by adjustment committees has been of much good. The system has not only brought employer and employee together to discuss the points, but as a result of such meetings, a better feeling has been engendered and, in many cases, employers and workmen follow a more rational course than they otherwise might do because of the fact that their action might show them to be grievously in error when reviewed by such a tribunal. Apart from the good thus derived, it aids greatly in the settlement of any disputes to have workmen remain at their employment pending consideration of the grievance and decision on same, for, where men either go on strike before an effort of the kind is made at adjustment, or if employers lock them out without following the process set forth in these agreements, we find it much more difficult in nearly every case to satisfy the aggrieved party about the strike or lockout than it is to adjust the original grievance."

The national officer of another strong labor union says:

"On the matter of arbitration I wish to say that it is one of the principles of our Association, even embodied in our constitution, to encourage arbitration wherever possible, and in nearly all of our written agreements with the various

companies a clause providing for arbitration for settlement of disputes is embodied. Our Association has been very successful in the matter of arbitration. One of the influences of the arbitration clause in our agreements is to bring about satisfactory mediation between the companies and our locals and it is but seldom that questions are allowed to reach the arbitration stage. Apparently, the company and the employees rather distrust the outcome of arbitration and the provision stimulates conciliation and were the agreements not protected by the arbitration clause, I apprehend the questions at issue would not receive serious and candid consideration that they now receive from both parties. The results of arbitration, so far as our experience goes, are generally beneficial, although at times the disappointed party feels that the other has gained an advantage by the decision, but when the storm blows over and the field is surveyed, the results are very satisfactory and serious conflicts are aborted and generally avoided. The greatest number of our arbitration cases have grown out of serious contentions where no provision existed between the parties for such arbitration. For instance, there are but very few strikes that do not ultimately reach some form of arbitration and which are not so decided and even then the result is no better and possibly not so beneficial as it would have been had the issue been arbitrated previous to the strike."

That the railroad brotherhoods believe in the adoption of arbitration as a means of settling differences which are of an arbitrable nature is evidenced by the declarations of their international conventions on the subject; by their strong and active efforts to secure the enactment into law of the Federal statute hereinbefore referred to and by the numerous instances in which they have sought the good offices of arbitrators in practical ways. Their experiences with arbitration have been satisfactory and encouraging.

The National Founders Association, organized some three years since, now has 400 members, employing 30,000 men. Joint conference with representatives of the Iron Molders Union was sought for the purpose of laying the foundation for permanent peace in the industry. The conference agreed upon a plan of arbitration which was promptly ratified by both associations, and which provided that there should be no strike or lockout until after arbitration had failed to find an adjustment of the differences. This agreement has proven most satisfactory and the arbitration feature of it has been frequently called into operation with gratifying results. It has not served in every instance to avert friction but in general it has done so and has operated to draw the employers and the employees in that industry much closer together

in relations of business confidence, out of which still greater good must grow.

Recent expressions and acts on the part of some who are prominent in employers' associations justify the conclusion that human nature is human nature whether it be under overalls or white vest. The Secretary of the Chicago Manufacturers' Association is quoted recently as saying "Arbitration is a fraud of the rankest kind" and "It was stricken from the principles of the Association after a three months' trial." Such expressions are as intemperate, extreme and inconsistent as the utterances of the veriest blatherskite under the guise of a labor leader.

Guy Warfield, in the *World's Work* for March, discusses conditions among the anthracite coal miners of Pennsylvania since the filing of the award of the Anthracite Coal Strike Commission. He sums up his conclusions as follows:

1. "The Board of Conciliation and Mediation has proved a greater advantage to the coal companies than to the miners.
2. "The nine hour day is no shorter or more profitable than the ten-hour day.
3. "The old difficulties which the arbitration board was supposed to have removed still exist.
4. "Even with the ten per cent. wage advance and the sliding scale, the average miner complains that he is no better off financially.
5. "Arbitration has not proved as successful as it was expected to be."

It is not worth while to discuss the statement that a nine-hour day is no shorter than a ten-hour day, or that workers are no better off after having received 12 or 15 per cent. wage advance.

What the Commission hoped for in the formation of the Board of Conciliation and the requirement that disputes be settled through and by it was that the coal operators and the coal miners, who had drawn as far apart as it was possible for employers and employees to get, would, through experience in this Board of Conciliation, come to realize the desirability and importance of adopting conciliatory methods and, if necessary, arbitration, in the settlement of disputes rather than the strike and lockout which have been so freely resorted to in the past. If the Board of Conciliation has proved a greater advantage to the companies than to the employees, no doubt it is because the contentions of the companies in the cases

that have been brought to the Board were possessed of more merit than were those of the opposing side. It was not to be expected that all the bitterness and suspicions that had been engendered through years of strife and warfare could be set aside within a few months, and it is yet too soon to say that the experiences of three years under the methods of conciliation and arbitration will not in the end bear the fruit that was hoped for by those who made the provision. The fact that this greatest of industrial struggles was submitted to arbitration was one of the highest triumphs of the principle and the most marked example of the final recognition of the rights of the affected public the world has ever seen. Benefits far in excess of those which would have been willingly accepted by the miners at an earlier stage came to them through the award of the Commission. A national calamity was averted and organized labor was lifted to a higher plane than it had before occupied.

Much has been said and written about compulsory arbitration. The term is paradoxical and self-contradictory. The true meaning of arbitration is a quality of perfect fairness under which the contestants are willing and prepared to act in good faith. There is no compulsion about it and when compulsion comes in, the true spirit of arbitration must necessarily depart. Volumes have been, and will be, written as to the advantages and disadvantages of compulsory arbitration in New Zealand, but even if it be admitted for argument's sake that the practice is generally satisfactory there, it by no means follows that it would be of advantage or that it would fit in at all in this country where conditions, ideas and ideals are so radically different from those in New Zealand. On the whole, compulsory arbitration may be said to have not been a shining success in the colonies where it has been tried. In free America it is a glittering impossibility. The paternalism which the system necessarily exercises dwarfs rather than develops individual character and initiative. It would not harmonize with the progressive ideas of the Western Hemisphere. In New South Wales, recently, two hundred miners refused to comply with the award of the State Arbitration Court and an attempt to punish them utterly failed. A recent award made by the New South Wales Arbitration Court stated that the award "contemplated"

a continuance of operation. It did not say that the employees should remain at work or that the operators should keep the industry going, but did say that while work continued it must be under the terms of the award.

Many of the States of the Union have provided State Boards of Mediation and Arbitration. In numerous instances such boards have succeeded through mediation in materially relieving strained situations and in some instances have averted serious conflicts. Their duty is to offer their services and not infrequently peace can be maintained through mediation of a third, disinterested party when neither of the contestants would suggest a middle ground upon which both could stand. The feeling seems to be that to suggest a compromise would be a sign of weakness. There has, however, never been much of a disposition to accept the State Boards as arbitrators. Standing boards of official arbitrators are not looked upon with favor, especially by the unionists.

There has been but little effort to give arbitrary or compulsory power to such State Boards. In 1899 the State of Kansas enacted a law for compulsory arbitration of disputes between railroad companies and their employees, which provided that the railroad might be placed in a receiver's hands if necessary to secure compliance with the act. This law was promptly declared unconstitutional and was never effective. A law, said to be a drastic measure, and providing for compulsory arbitration of labor disputes, is reported to have been passed in the closing hours of the last session of the Legislature of Maryland. Its operation and fate will be watched with interest.

Martin F. Murphy, writing for the *Glass Worker*, says:

"The industrial problems, so-called, can be adjusted in a large degree along the lines of least resistance and the line of least resistance, in my opinion, is voluntary arbitration." . . . "I conceive it to be the solemn duty, yea, the greatest duty of the men, who to-day happen to be in some degree the molders of thought on these profound questions, to spread the gospel of conciliation and arbitration, lest there come a crash between the economic forces in this land that will destroy the republic. I call upon those who are wage-payers to study their relations to their employees with a determination to get at the equities and uphold them. I warn some of you that you have many prejudices to bury and much wisdom to gain. I call upon those conspicuous

leaders of labor unions to beware of the temptations begotten by the arrogance of power."

Endorsing these expressions and with apologies to William Ellery Channing, and paraphrasing somewhat his forceful utterance, I would say: We should teach all labor leaders and managers of industries that there is no measure for which they must render so solemn an account to their constituents as for a declaration of industrial war; that no measure will be so freely, so fully discussed; that none of them can succeed in persuading the labor unionists or the stockholders to exhaust their prestige and their treasure and the comforts of their families in supporting industrial war unless it be palpably necessary and just.

If we were to eliminate confidence in the integrity of fellow man from business relations, our whole commercial structure would crumble to the ground. If we were to destroy belief in the honesty of judicial minds, all protection to property would disappear with the passing of the system of judiciary. If we place no reliance in the devotion to duty on part of those charged with conducting transportation by land and by water we would destroy the usefulness and effectiveness of our means of intercommunication. If we can—and we do—find plenty of men possessed of the necessary integrity, honesty of purpose, loyalty and devotion to insure the reliability and stability of our commercial, judiciary and transportation systems, surely there need be no great difficulty in finding those whose judgment and honesty can be confidently depended upon as arbitrators to fairly and intelligenty decide industrial disputes.

The best conditions possible of attainment in our industrial world must come through a willingness on the part of both sides to give careful and proper recognition to the rights of their opponents, as well as to the rights of the large numbers who are necessarily affected by a conflict between the two, and must come through a spread of the principles of the Golden Rule which includes the true spirit of arbitration.

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